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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
10/825,752	04/16/2004	David Hung	12.023011-CIP	8506	
38732 CYTYC CORP	7590 08/07/2007 PORATION		EXAMINER		
250 CAMPUS		BROWN, MICHAEL A			
MAKLBURUU	JGH, MA 01752		ART UNIT	PAPER NUMBER	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of unior may be available under the provision of 3°C FR 1.136(a), in no event, however, may a reply be limitely filed 1 If NO period for ringly is specified above, the maximum statution, even of state and state in the specified above, the maximum statution, even if state in the specified above, the maximum statution, even if timely filed, may reduce any senior of puterior time adjustment. Sea 3° CFR 1.74(b). Status 1) Responsive to communication(s) filed on 26 January 2007. 2a) This action is FINAL. 2b) This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. Disposition of Claims 4 Claim(s) 1-5 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration. 5 Claim(s) 1-5 is/are rejected. 7 Claim(s) 1-5 is/are rejected. 7 Claim(s) 1-5 is/are rejected to by the Examiner. 10 The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Application Papers 9 The specification is objected to by the Examiner. 10 The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Application Papers 9 The cath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12 Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) All b) Some c) Mone of: 1 Certified copies of the priority documents have been received. 2 Certified copies of the priority documents have been received in Application No. 3 Copies of the certified copies of the priority documents have been received. Attachment(s) Attachment(s) All intervew Summany (PTO-413) Paper No(s)/Mail Date. Paper No(s)/Mail Date.				- (.
## Deficiency Examiner Michael Brown 3772 ## The MAILING DATE of this communication appears on the cover sheet with the correspondence address → Period for Reply A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. **Examiners of their high sevaluate under the provisions of 31 CFR 1.30(a), in no event, however, may a reply be trindly filed in 1th Deptid For reply is specified whose, the maximum statutory period will again and will statute the realing date of this communication. Failure to reply within the set or extended print for reply will, by statutory period will again and will statute the communication. Failure to reply within the set or extended print for reply will, by statutory period will again and the communication. The statute is a set or extended print for reply will, by statutory period will again and will be communication. The statutory will be statutory and will again an event in the provision of the statutory will be statutory and will be provided as of this communication. The statutory will be statutory and will be statutory as an experiment of the statutory will be statutory as an experiment of the statutory will be statutory and will be statutory as an experiment of the statutory will be statutory as an experiment of the statutory will be statutory as an experiment of the statutory will be statutory as an experiment of the statutory will be statutory as a statut		Application No.	Applicant(s)	
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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS. WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. ***arter SIX (8) MONTHS from the making date of this communication. ***IN Depends or reply is secretic above, the making state of this communication or reply to the treating date of this communication. **Fallure to reply within the said or detended period for reply will, by above, cause the application to become ARANDONED (35 U.S. § 133). **Fallure to reply within the said or detended period for reply will, by above, cause the application to become ARANDONED (35 U.S. § 133). **Fallure to reply within the said or detended period for reply will, by above, cause the application, even if smally feed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b). **Status** 1) □ Responsive to communication(s) filled on 26 January 2007. 2a) □ This action is FINAL. 2b) □ This action is non-diract. 3) □ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. **Disposition of Claims** 4) □ Claim(s) 1.5 is/are pending in the application. 4a) ○ Of the above claim(s) is/are allowed. 5) □ Claim(s) 1.5 is/are rejected. 7) □ Claim(s) is/are allowed. 5) □ Claim(s) is/are objected to. 8) □ Claim(s) is/are objected to by the Examiner. 4) □ The specification is objected to by the Examiner. 4) □ The drawing(s) filed on is/are: a) □ accepted or b) □ objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) inducing the correction is required if the drawing(s) bejected to. See 37 CFR 1.121(d). 11) □ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. **Priority under 35 U.S.C. § 119 12) □ Acknowledgment is made of a claim for foreign priority under 35 U.S.		Į.		
WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION. Extensions of time raply be variable under the provisions of 3 CFR 1.13(a). In no event however, may a reply be timely fixed and read X (5) MCMTrSS throm the mailing date of this communication. **Failure for reply which the star created paint of romain you. Why stance, may be used to be become ARAMODED (34 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely fixed, may reduce any sentred patient time adjustment. Set 3 T.CFR 1.704(b). **Status** **In Responsive to communication(s) filed on 26 January 2007. **2a] This action is FINAL. 2b] This action is non-final. 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213. **Disposition of Claims** 4) Claim(s) 1-5 is/are pending in the application. 4a) Of the above claim(s) is/are allowed. 4a) Of the above claim(s) is/are allowed. 5b] Claim(s) is/are allowed. 6c) Claim(s) is/are objected to. 8c) Claim(s) is/are objected to. 8c) Claim(s) is/are objected to by the Examiner. 4pplication Papers 9) The specification is objected to by the Examiner. Application Papers 9) The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner. Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to See 37 CFR 1.121(d). 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152. Priority under 35 U.S.C. § 119 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f). a) High paper Nocly, Mail Date	The MAILING DATE of this communication app Period for Reply	ears on the cover sheet	with the correspondence address	
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Art Unit: 3772

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 and 3 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 26 of U.S. Patent No. 6,391,026. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 of the present invention only positively recites a method of treating a breast comprising applying vibration to the duct (where to the duct can be internal or external to the breast). Claim 26 of Hung recites the same method comprising treating a breast by vibrational energy. Although the vibrational energy of Hung is used to activate the agent in the duct, the result is still an application of ultrasound to the duct. The vibrational energy of the Hung patent is also used to increase the amount of retrievable cells via activation of the agent.

Art Unit: 3772

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hung '228 in view of Love, along with Powell and Kim

Hung discloses in col. 11, lines 65- col. 12, lines 40 a method for increasing a retrievable cell amount, substantially as claimed. However, Hung discloses massaging the breast. Love teaches in figures 1-7C a method for increasing a retrievable cell using a mild vacuum to the nipple to collect cells from the breast. Powell teaches in figures 1-3 using suctions and vibration to obtain milk from the breast. Kim teaches using vibration that includes ultrasound to collect cells from the body (col. 3, lines 46-59). It would have been obvious to one having ordinary skill in the art at the time that the invention was made that vibration as taught by Powell and Kim could be substituted for massaging as disclosed by Hung because vibration or massaging can be used to stimulate the breast and cause cells to come from the breast. Applying vibration to the breast duct would definitely increase the amount of cells that could be retrieved and collected from the breast duct. Massaging, vibrating and applying a vacuum to the body are interchangeable. All three are used to increase the flow of fluid from the breast (these fluids can include milk which will include cells). The vibration is

applied externally to the breast as taught by Powell. Powell teaches applying warn water (heat) to the breast. Love and Hung teach collecting cells through ductal lavage.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Brown whose telephone number is 571-272-4972. The examiner can normally be reached on 5:30 am-4:00 pm Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on 571-272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Brown/ 07-29-07